IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

Crl.MC.No. 368 of 2007()

AGAINST THE ORDER DATED 31/01/2007 IN CRMP.21/2007 IN SC.243/2003 of ADDL. SESSIONS COURT, THRISSUR

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PETITIONER:

K.T. SIMON, AGED 32,
S/O. K.K. THOMAS,
KALAPURACKAL HOUSE,
MALA P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.RAJAN JOSEPH
SRI.KOSHY GEORGE
SRI.P.I.DAVIS

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. CIRCLE INSPECTOR OF POLICE,
MALA POLICE STATION,
MALA,
THRISSUR DISTRICT.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 368 OF 2007

Dated this the 14th day of February, 2007

ORDER

The petitioner has come to this Court aggrieved by Annexure-B order passed by the learned Additional Sessions Judge on Annexure-A petition filed by the Investigating Officer. By the said order, further investigation under Sec.173(8) of the Cr.P.C. was sanctioned. The petitioner was originally shown as accused; but in the final report filed no allegations were raised against him.

2. The petitioner claims to be aggrieved by the impugned order. What is the grievance? The short contention raised by the learned counsel for the petitioner is that the application – Annexure-A under Sec.173(8) of the Cr.P.C. has been filed by the Investigating Officer not on his own; but on the basis of the assessments made by the Prosecutor-in-charge of the case. The learned counsel for the petitioner submits that the investigation and prosecution are two different functions in two different domains and that

the Prosecutor was not justified in compelling the Investigating Officer to file a petition under Sec.173(8) of the Cr.P.C. to conduct further investigation. Inasmuch as the decision has not been taken by the Investigating Officer himself and inasmuch as he has been prompted to take a decision to conduct further investigation under Sec.173(8) of the Cr.P.C. at the behest of Prosecutor, Annexure-A application and Annexure-B order are not sustainable, it is contended. The learned counsel for the petitioner places heavy reliance on the decision of the Supreme Court in **R. Sarala v. T.S. Velu** (AIR 2000 SC 1731). In particular, the learned counsel relies on the observations in para-12 of the said judgment.

3. I am afraid, the dictum in the said case is not applicable to the facts of this case at all. That was a case where the High Court directed an Investigating Officer to compulsorily take back the case from the court and to consult with the Public Prosecutor and submit a fresh charge sheet in tune with the opinion of the Public Prosecutor. The acceptability of such a course fell for consideration of the learned Honourable Judges in **R. Sarala v. T.S. Velu** (AIR 2000 SC 1731).

4. The Prosecutor, who is obliged to conduct the prosecution on the final report submitted by the Investigating Officer did realise that there was some material inadequacy/error in the conduct of the investigation. He appears to have brought this to the notice of the superior officer and the Director General of Police had directed the Investigating Officer to continue the investigation and it is, accordingly, that the report seeking permission for further investigation has been filed. Annexure-A does not at all reveal that the Investigating Officer was not satisfied with the need for a further investigation. Yes, the need of such a further investigation dawned on the Investigating Officer on the basis of the assessment of the Public Prosecutor communicated to the Director General of Police and the consequent instructions given by the Director General of Police. Such instructions given by the Director General of Police cannot by any stretch of imagination be held to be objectionable or impermissible interference with the freedom of the Investigator to take decisions in his domain. According to me, nothing irregular, improper or illegal has been committed by the Prosecutor in

pointing out the major flaws in the investigation to the Director General of Police and the Director General of Police, in turn, taking necessary action on the basis of such information placed before him. Annexure-A, I repeat does not at all indicate that the decision was not taken by the Investigating Officer or against his wishes. It is evident that, after the instructions were given, he realised the need for further investigation.

5. This Crl.M.C. is, in these circumstances, dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge